

**REMARKS**

Following entry of this Amendment, claims 1-3, 5-14, 16-19, 22 and 23 are currently pending in the application. The current Office Action (O.A.) dated October 13, 2008 (Paper No. 20081026) objects to claims 20 and 21 under 35 C.F.R. §1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claims 1-3, 5-14 and 16-21 under 35 U.S.C. §103(a) as being unpatentable over Hoehn-Saric et al. (U.S. Patent No. 5,915,973; hereinafter referred to as "Hoehn-Saric") in view of DeNicola et al. (U.S. Pat. No. 6,288,753; hereinafter referred to as "DeNicola").

**Objections to Claims 20 and 21 Based Upon 35 U.F.R. §1.75(c)**

The O.A. objects to claims 20 and 21 under 35 C.F.R. §1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claims 20 and 21 have been canceled.

**Rejections Based Upon 35 U.S.C. §103(a)**

Claims 1-3, 5-14, 16-19, 22 and 23 under 35 U.S.C. §103(a) as being unpatentable over Hoehn-Saric et al. (U.S. Patent No. 5,915,973; hereinafter referred to as "Hoehn-Saric") in view of DeNicola et al. (U.S. Pat. No. 6,288,753; hereinafter referred to as "DeNicola"). Claims 1, 8, 14 and 22 have been amended to clarify that which Applicants consider a novel aspect of the disclosed technology, i.e. that images of the student are taken randomly during the exam to verify the identity of the student. Support of these amendments can be located in the Specification at ¶[0044], which states:

The images are transferred from the client computer to the server. When the student takes an exam, the applet instructs the video camera to take an initial picture of the student which can be used for identification purposes. In addition, subsequent images of the student may be taken at random points in time while the student is taking the exam.

(¶[0044], lines 14-19). This feature enables a test administrator to prevent one student from registering for the test and a second student taking the test, i.e. to verify that the person who registers for the test takes the test. As explained below, Hoehn-Saric, which is relied upon by the

O.A. for the student identification feature, simply does not teach or suggest this element. Further, DeNicola also does not teach or suggest this element.

Unlike Applicants' claimed subject matter, biometric verification of Hoehn-Saric is limited primarily to the registration process of the exam. This is clearly illustrated in Hoehn-Saric's FIG. 3, which is cited in the O.A. In FIG. 3, the input and comparing of biometric data is only illustrated and described in conjunction with steps 60-67. Once the verification is completed in step 67, test question data is communicated in step 69. **There is no path in FIG. 3 that returns control to any of steps 60-67 once the test question data has been communicated during step 69.** Although, FIG. 4 suggests a path in which a biometric test is executed during a test, the path is executed as the result of and "invalidating event" 64 or 72 rather than Applicants' "captured randomly." "Invalidating events" are described as follows:

An invalidating event could be, for example, the presence of two persons in the remote testing station, or an attempt to improperly or fraudulently enter biometric data. Typically, the types of occurrences or data which would constitute invalidating events would vary depending on the particular test and level of security required. The proctoring data may include more than audio/visual data, such as a signal from an electronic door lock, etc., in which case, an invalidating event could be an unlocked or opened door signal.

(col. 8, lines 3-12). Although, repetitions of a particular action do not necessarily constitute novel subject matter, in this case, the randomness of the verification serves an additional purpose neither taught nor suggested by Hoehn-Saric and DeNicola, either alone or in combination, i.e. insurance that a person who registers and begins a test is the person who completes the test.

For the reasons stated above, independent claims 1, 8 and 14 are allowable and Applicants respectfully request withdrawal of the §103(a) rejections. Each of dependant claims 2, 3, 5-7, 9-13 and 16-19 are allowable at least for the fact that they each depend upon one of the allowable independent claims and Applicants request that these rejections be withdrawn as well.

With respect to the §103 rejection of claim 22, the O.A. relies upon DeNicola for the limitation "accessing the exam in order to take the exam by entering a student ID and a password and the unique exam title access code assigned to the exam." However, the cited passage of DeNicola states, "[T]he Web server receives a request from the at least one remotely-located end user **to take the test name**" (col. 5, lines 59-61). The claimed subject matter associates a

"unique exam title access code," which is not a "test name." Therefore, DeNicola does not suggest this particular element of claims 22 and Applicants respectfully request withdrawal of the §103 rejection of claim 22. In addition, claim 23 is allowable at least for the fact that it depends allowable independent claim 22 and Applicants request that these rejections be withdrawn as well.

### **CONCLUSION**

For the reasons stated above, Applicants respectfully request withdrawal of objections to the claims and the 103(a) rejections of claims 1-3, 5-14, 16-19, 22 and 23. It is respectfully submitted that all issues and rejections have been adequately addressed and that pending claims 1-3, 5-14, 16-19, 22 and 23 are allowable and that the case should be advanced to issuance. If the Examiner has any questions or wishes to discuss the claims, the Examiner is encouraged to call the undersigned at the telephone number indicated below. It is believed that no fees are due with the filing of this Response. However, should any other fees be due, the Commissioner is hereby authorized to charge such fees to the deposit account of IBM Corporation, Deposit Account No. 09-0447.

Respectfully submitted,

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